

REMARKS

The present Amendment is in response to the Official Action dated September 7, 2007. Claims 1 and 10 have been amended. Therefore, claims 1-5 and 7-18 remain pending in the present application. Applicants' remarks relating to the pending claims and the outstanding Action are set forth below.

As an initial matter, Applicants respectfully thank the Examiner for conducting the telephone discussion with Applicants' undersigned counsel on Monday, October 22, 2007. During that discussion, the Examiner, and his Supervisor, agreed that making the above-amendments would overcome the rejections set forth in the Action. Nonetheless, Applicants set forth a brief discussion relating to the rejections below.

In the Action, the Examiner rejected claims 1-5 and 7 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,991,654 to Foley ("Foley"), claim 10 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,296,647 to Robioneck et al. ("Robioneck"), claim 8 under 35 U.S.C. § 103(a) as being obvious in view of Foley, claim 9 under 35 U.S.C. § 103(a) as being obvious over Foley in view of U.S. Patent Publication No. 2003/0093153 to Banick et al. ("Banick"), claims 11-17 under 35 U.S.C. § 103(a) as being obvious over Robioneck in view of U.S. Patent No. 6,235,034 to Bray ("Bray"), and claim 18 under 35 U.S.C. § 103(a) as being obvious over Robioneck in view of Bray and in further view of U.S. Patent No. 6,413,259 to Lyons et al. ("Lyons"). In short, it is the Examiner's position that each and every one of the elements of the originally presented claims are either anticipated and/or obviated in view of the prior art noted above.

The prior art cited by the Examiner only teaches fusion devices in connection with multi-piece implants where the pieces are mechanically fixable with respect to one another. On

the other hand, the present invention is directed to overcoming the difficulty of affixing and inserting multi-piece implants that are capable of moving with respect to one another in order to restore normal spinal movement. This particular difference was discussed during the October 22nd telephone discussion. The Examiner, and his Supervisor, suggested that adding a method step relating to the movement of the vertebral bodies and the first and second implant members would demonstrate the differences between the present invention and the fusion devices of the prior art. As a result, the amendments suggested by the Examiner during the telephone interview have been made to independent claims 1 and 10, and Applicants respectfully submit that independent claims 1 and 10, as amended, are allowable over the prior art cited by the Examiner. Given that claims 2-5, 7-9, and 11-18 properly depend from one of independent claim 1 or independent claim 10, such claims also necessarily overcome the prior art cited by the Examiner. A dependent claim is necessarily narrower than an independent claim from which it properly depends. Therefore, Applicants respectfully request allowance of each and every one of current claims 1-5 and 7-18.

Finally, due to the finality of the Action, and per the suggestions of both the Examiner and his Supervisor, the present amendment is being submitted in connection with a Request for Continued Examination ("RCE"). Applicants' respectfully submit that the submission of the RCE requires the withdrawal of the finality of the Action.

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at

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(908) 654-5000 in order to overcome any additional objections which he might have.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: October 29, 1007

Respectfully submitted,

By 

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